

2005 DRAFTING REQUEST

Bill

Received: **01/31/2006**

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **Administration 7-7980**

By/Representing: **Michelle Pink**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Employ Priv - miscellaneous
Health - medical assistance**

Extra Copies: **DAK, RLR**

Submit via email: **YES**

Requester's email: **michelle.pink@doa.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Large employers; reduction of health care benefits; assessment

Instructions:

See Attached--provide for assessment on large employers that reduce health care benefits with the intent of dumping employees onto state's Badger Care program.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 02/03/2006	jdyer 02/06/2006		_____			State Crime
/1			rschluet 02/06/2006	_____	mbarman 02/06/2006		State Crime
/2	gmalaise 02/10/2006	jdyer 02/10/2006	pgreensl 02/10/2006	_____	sbasford 02/10/2006	lnorthro 02/23/2006	

FE Sent For:

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/1		1/2 3/10 jld	rschluet 02/06/2006	2/10 p8	mbarman 02/06/2006		

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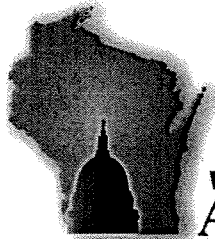
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/?	gmalaise	1 2/6 JLD	266 CH				
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FE Sent For:

<END>



**WISCONSIN DEPARTMENT OF
ADMINISTRATION**

JIM DOYLE
GOVERNOR

STEPHEN E. BABLITCH
SECRETARY

Division of Executive Budget and Finance
Post Office Box 7864
Madison, WI 53707-7864
Voice (608) 266-1736
Fax (608) 267-0372
TTY (608) 267-9629

Date: January 26, 2006

To: Steve Miller
Director, Legislative Reference Bureau

From: Jim Johnston

Subject: Drafting Requests for the Governor's State of the State Health Care Initiatives

Attached are three drafting requests related to the health care initiatives the Governor announced during his state of the State address. The specific requests are for:

Family Care Expansion – Delete the current statutory cap on the percentage of the population eligible for Family Care coverage and modify legislative oversight of the expansion effort.

Penalty for Large Employers Dumping Health Care Benefits – Create a civil forfeiture for large employers who deliberately take action to reduce health care benefits with the intent of dumping employees onto the State's BadgerCare program.

Catastrophic Coverage Reinsurance Pool – Create a new authority to study options for developing a reinsurance pool to help employers and individuals control health care costs. The authority will also implement the reinsurance program.

We will notify you soon regarding legislative sponsors for these initiatives and plan to get these bills introduced shortly.

cc: David Schmiedicke
Tim Casper, Governor's Office

Health Insurance Dumping Penalty State of the State Initiative

Current Language

None

Proposed Change

Create a civil forfeiture penalty to be imposed on large, for-profit employers (defined as having over 10,000 employees in Wisconsin), who take purposeful action to restrict employee access to employer-sponsored health insurance.

Effect of the Change

Any for-profit business with over 10,000 employees in Wisconsin that is determined to be dumping employees off their employer-sponsored health insurance coverage into the state's

- ✓ BadgerCare waiver program will be subject to a \$250,000 civil forfeiture penalty per incident.
 - ✓ The Department of Health and Family Services will have the authority to impose the forfeiture.
 - ✓ Funds received from the penalty will be deposited into the Medicaid Trust Fund to support the Medicaid program.
- Employees will be able to file complaints of health insurance dumping with the Department of
- ✓ Health and Family Services. Employees who file complaints will be protected from retribution under whistleblower provisions.
- ✓ The terms "dumping" and "incident" will be defined in rules promulgated by the Department of Health and Family Services, in collaboration with the Departments of Commerce and Revenue. The forfeiture would be imposed for businesses that take purposeful action to modify employee benefits to restrict access to employer sponsored health insurance. The definitions of "employee" and "employer" will be consistent with the definitions used by the Department of Workforce Development for workforce reporting.
- ✓ DHFS will file an annual report starting in January, 2007, to the Governor and the Senate and Assembly health committees on the development and implementation of the anti-dumping program. The report will include information on all alleged incidents of dumping and the resolution of each incident.

Rationale for the Change

Since 2000, the percentage of Wisconsin residents covered by employer-sponsored health insurance has declined, while the number of recipients enrolled in the state's family Medicaid and BadgerCare programs has increased. In order to prevent further erosions in employer-sponsored coverage, this penalty will provide a disincentive to employers to limit or discontinue the amount of health insurance coverage provided to employees.

Desired Effective Date:

Upon Passage

Agency:

DOA

Agency Contact:

Michelle Pink 267-7980, or Jim Johnston, 266-3420



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-4523/7

GMM:m...:...

DVORE

Lines 217

LPS - please
check auto refs

Gen

- 1 AN ACT ...; relating to: an assessment on large employers that reduce or
2 eliminate health care coverage, providing an exemption from emergency rule
3 procedures, requiring the exercise of rule-making authority, and providing a
4 penalty.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Health and Family Services (DHFS) administers the Badger Care health care program under which DHFS provides comprehensive health care coverage to eligible children and families (Badger Care). Generally, a child or a family whose income does not exceed 185 percent of the federal poverty line and that does not have access to employer-subsidized health care coverage for which the employer subsidizes at least 80 percent of the cost are eligible for Badger Care. *

This bill prohibits a for-profit employer employing 10,000 or more full-time or part-time employees in this state (large employer) from reducing or eliminating the health care coverage provided to its employees if the large employer knows or should know that the reduction or elimination will or may result in enrollment of the child or the family of an employee in Badger Care. The bill permits DHFS to impose on any large employer that reduces or eliminates the health care coverage provided to its employees in violation of the bill an assessment of not more than \$250,000 and requires DHFS to deposit any assessments collected under the bill in the Medical Assistance trust fund. The bill requires DHFS, in determining whether an assessment is to be imposed and, if so, in fixing the amount of the assessment, to consider the gravity of the violation, any good faith exercised by the large employer, any previous violations committed by the large employer, the financial benefit to the *

large employer of committing or continuing the violation, and any other factors that are relevant to determining whether an assessment should be imposed and, if so, to fixing the amount of the assessment.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 25.77 (8) of the statutes is created to read:

25.77 (8) All moneys received under s. 49.667 (2) (f).

SECTION 2. 49.665 (4) (a) 3r. of the statutes is created to read:

49.665 (4) (a) 3r. Each member of the family who is employed by a large employer, as defined in s. 49.667 (1) (c), states whether within the time period specified in subd. 3. the large employer has reduced or eliminated the health care coverage, as defined in s. 49.667 (1) (b), offered to that family member.

SECTION 3. 49.665 (4) (b) 3r. of the statutes is created to read:

49.665 (4) (b) 3r. Each parent of the child who is employed by a large employer, as defined in s. 49.667 (1) (c), states whether within the time period specified in subd. 3. the large employer has reduced or eliminated the health care coverage, as defined in s. 49.667 (1) (b), offered to that parent.

SECTION 4. 49.667 of the statutes is created to read:

49.667 Large employer health care assessment. (1) DEFINITIONS. In this section:

(a) "Employee" means any individual employed fulltime or parttime in this state by a large employer.

(b) "Health care coverage" means surgical, medical, hospital, major medical, or other health care coverage offered by a large employer.

1 (c) "Large employer" means any person engaging in any activity, enterprise, or
2 business for profit that employs 10,000 or more employees in this state.

3 (2) REDUCTION OR ELIMINATION OF HEALTH CARE COVERAGE PROHIBITED. (a) Except
4 as provided in sub. (3), no large employer may reduce or eliminate the health care
5 coverage provided to its employees if the large employer knows or should know that
6 the reduction or elimination will or may result in enrollment of the child or the family
7 of an employee in the Badger Care health care program under s. 49.665.

8 (b) Any large employer that violates par. (a) or a rule promulgated by the
9 department under sub. (5) may be required to pay to the department an assessment
10 of not more than \$250,000. All violations arising out of the same incident or
11 occurrence shall be counted as a single violation.

12 (c) In determining whether an assessment is to be imposed and, if so, in fixing
13 the amount of the assessment, the department shall consider all of the following
14 factors:

15 1. The gravity of the violation, including the number of employees, children,
16 and other family members affected by the reduction or elimination of health care
17 coverage, the degree to which those employees, children, and other family members
18 are affected by that reduction or elimination, and the cost of increased enrollment
19 in the Badger Care health care program under s. 49.665 as a result of that reduction
20 or elimination.

21 2. Good faith exercised by the large employer. Indications of good faith include
22 any past or ongoing efforts by the large employer to provide employer-subsidized
23 health care coverage, as defined in s. 49.665 (1) (c), and other mitigating factors in
24 favor of the large employer.

25 3. Any previous violations committed by the large employer.

1 4. The financial benefit to the large employer of committing or continuing the
2 violation.

3 5. Any other factors that are relevant to determining whether an assessment
4 should be imposed and, if so, to fixing the amount of the assessment.

5 (d) The department may directly impose an assessment provided for under par.

6 (a). If the department determines that an assessment should be imposed for a
7 violation, the department shall send a notice of assessment to the large employer.
8 The notice shall specify the amount of the assessment imposed, the violation, and the
9 statute or rule alleged to have been violated, and shall inform the large employer of
10 the right to a hearing under par. (e).

11 (e) A large employer may contest an assessment imposed under par. (b) by
12 sending, within 10 days after receipt of notice under par. (d), a written request for
13 hearing under s. 227.44 to the division of hearings and appeals in the department
14 of administration. The administrator of the division may designate a hearing
15 examiner to preside over the case and recommend a decision to the administrator
16 under s. 227.46. The decision of the administrator of the division shall be the final
17 administrative decision. The division shall commence the hearing within 30 days
18 after receipt of the request for hearing and shall issue a final decision within 15 days
19 after the close of the hearing. Proceedings before the division are governed by ch.
20 227. In any petition for judicial review of a decision by the division, the party, other
21 than the petitioner, who was in the proceeding before the division shall be the named
22 respondent.

23 (f) All assessments shall be paid to the department within 10 days after receipt
24 of notice of assessment or, if the assessment is contested under par. (e), within 10
25 days after receipt of the final decision after exhaustion of administrative review,

1 unless the final decision is appealed and the order is stayed by court order under s.
2 227.54. A large employer may not deduct any part of an assessment paid under this
3 subsection from the wages of an employee. The department shall deposit any
4 assessments received under this subsection in the Medical Assistance trust fund.

5 (g) The attorney general may bring an action in the name of the state to collect
6 any assessment imposed under this section if the assessment has not been paid
7 following the exhaustion of all administrative and judicial reviews. The only issue
8 to be contested in any such action shall be whether the assessment has been paid.

9 (3) EXCEPTIONS. A large employer is not liable under sub. (2) (b) for reducing
10 or eliminating an employee's health care coverage, if the department determines
11 that the reduction or elimination of health care coverage is the result of any of the
12 following:

13 (a) The sale of part or all of the large employer's business, if the purchaser
14 agrees in writing, as part of the purchase agreement, to continue providing health
15 care coverage to all employees who received that coverage before the sale with no
16 reduction in coverage and no break in coverage.

17 (b) A natural or man-made disaster beyond the control of the large employer.

18 (4) RETALIATION PROHIBITED. (a) A large employer may not do any of the
19 following:

20 1. Discharge or otherwise retaliate or discriminate against any employee for
21 contacting, providing information to, or otherwise cooperating with the department
22 concerning an alleged violation of sub. (2) (a) or for participating, testifying, or
23 assisting in any proceeding under sub. (2) (b) to (g).

24 2. Discharge or otherwise retaliate or discriminate against any employee on
25 whose behalf another person contacted, provided information to, or otherwise

1 cooperated with the department concerning an alleged violation of sub. (2) (a) or on
2 whose behalf another person participated, testified, or assisted in any proceeding
3 under sub. (2) (b) to (g).

4 (b) Any employee who is discharged or otherwise retaliated or discriminated
5 against in violation of par. (a) 1. or 2. may file a complaint with the department of
6 workforce development under s. 106.54 (8).

7 (c) Any large employer that violates par. (a) 1. or 2. may be fined not more than
8 \$1,000 or imprisoned for not more than 6 months or both.

9 (5) RULES. The department of health and family services shall promulgate
10 rules to implement this section, including rules establishing criteria for determining
11 what constitutes a reduction or elimination of health care coverage and what
12 constitutes an incident or occurrence of health care coverage reduction or
13 elimination. The department of health and family services shall consult with the
14 department of commerce and the department of revenue in promulgating those
15 rules.

16 (6) ANNUAL REPORT. In January of each year, the department shall submit a
17 report to the governor and to the appropriate standing committees of the legislature
18 under s. 13.172 (3) on the department's activities during the previous year relating
19 to the implementation, enforcement, and administration of this section. The report
20 shall specify for the previous year the number of violations of sub. (2) (a) alleged to
21 have been committed and the disposition of those alleged violations, including for
22 each alleged violation whether an assessment was imposed and, if so, the amount of
23 the assessment.

24 SECTION 5. 106.54 (8) of the statutes is created to read:

1 106.54 (8) The division shall receive complaints of discharge, retaliation, or
2 discrimination under s. 49.667 (4) (b)✓ and shall process those complaints in the same
3 manner that employment discrimination complaints are processed under s. 111.39.✓

4 **SECTION 6. Nonstatutory provisions.**

5 (1) LARGE EMPLOYER HEALTH CARE ASSESSMENT; RULES.✓

6 (a) The department of health and family services shall submit in proposed form
7 the rules required under section 46.667 (5)✓ of the statutes, as created by this act, to
8 the legislative council staff under section 227.15 (1)✓ of the statutes no later than the
9 first day of the 6th month beginning after the effective date of this✓ paragraph.

10 (b) Using the procedure under section 227.24✓ of the statutes, the department
11 of health and family services may promulgate as emergency rules the rules required
12 under section 46.667 (5) of the statutes, as created by this act, for the period before
13 the effective date of the rules submitted under paragraph (a). Notwithstanding
14 section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this
15 paragraph remain in effect until the date on which the rules submitted under
16 paragraph (a) take effect. Notwithstanding section 227.24 (1) (a) and (3) of the
17 statutes, the department of health and family services is not required to provide
18 evidence that promulgating a rule under this paragraph as an emergency rule is
19 necessary for the preservation of public peace, health, safety, or welfare and is not
20 required to provide a finding of emergency for a rule promulgated under this
21 paragraph.✓

22 **SECTION 7. Initial applicability.**

(1) REDUCTION OR ELIMINATION OF HEALTH CARE COVERAGE. This act first applies to a reduction or elimination of health care coverage that takes effect on the effective date of this subsection.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4523/1dn

GMM:.....

JLD

Michelle:

(2)

As you will see on reviewing the draft, the draft goes beyond your instructions somewhat in order to provide a little bit of procedural and substantive due process. * Specifically, s. 46.667 (c) to (g), which are patterned after s. 50.98 (2) to (6) provides for notice of an assessment, a fair hearing, and judicial review and for factors for DHFS to consider in imposing an assessment. Also, s. 49.667 (3), which is patterned after s. * 109.075 (6), provides an exception to liability for when the business is sold and for natural disasters. In addition, please note that the draft uses the term "assessment" rather "forfeiture." That is because under the Wisconsin Constitution, all forfeitures must be deposited in the school fund, whereas your intent is to deposit all assessments in the MA trust fund.

Income

* Also, you are going to get an argument that this draft is preempted by the federal * Employment Retirement Security Act of 1974 (ERISA), 29 USC 1001, et seq., whose general preemption clause states that ERISA supercedes any state laws that relate to any employee benefit plan. 29 USC 1144 (a). In the past, the U.S. Supreme Court interpreted this preemption clause broadly to preclude the operation of state laws that had any connection with or, indeed, even referenced an employee benefit plan. *FMC v. Holliday*, 498 U.S. 52 (1990). Accordingly, because this draft "relates to" health care coverage, which is an employee benefit provided under an employee benefit plan, the draft arguably would be preempted by ERISA.

More recently, however, in *New York Conference of Blue Cross v. Traveler's Insurance Co.*, 514 U.S. 645 (1995), the U. S. Supreme Court upheld a New York law imposing a surcharge on insurers other than Blue Cross even though the surcharge increased costs for employers buying coverage from those insurers. In so holding, the court noted that the objective of the ERISA preemption clause was to permit employers to administer one uniform benefit package without having to take on the administrative and financial burdens of complying with conflicting state and local laws. Under the New York law, an employer was not compelled to offer any particular benefits or to administer its plan in any particular way, and the surcharge had, at most, only an indirect economic effect on an employer's choice as to what coverage to offer. The court acknowledged, however, that a state law that had only an indirect economic effect on an ERISA plan could be preempted if its effects were so acute as to force those plans "to adopt a certain scheme of substantive coverage or effectively restrict its choice of insurer." *Id.* at p. 668.

Accordingly, your response to a preemption argument is that the draft in no way affects an employer's health care plan. Under the draft, an employer remains perfectly free to offer any type of plan it wants, including no plan at all, and to administer its plan in any way it sees fit, subject only to ERISA. All the draft is saying is that, if an employer reduces or eliminates the health care coverage provided to its full-time or part-time employees, the employer must pay an assessment. Thus, the draft would be preempted by ERISA only if it were found that that condition had the effect of coercing employers into adopting a "certain scheme of substantive coverage."

If you have any questions about the draft or about this drafter's note, please do not hesitate to contact me directly at the phone number or e-mail address listed below.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
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LRB-4523/1dn
GMM:jld:rs

February 6, 2006

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Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-4523/1

GMM:jld:rs

Mon 2/13

2005 BILL

Reger

1 AN ACT *to create* 25.77 (8), 49.665 (4) (a) 3r., 49.665 (4) (am) 3r., 49.667 and
2 106.54 (8) of the statutes; **relating to:** an assessment on large employers that
3 reduce or eliminate health care coverage, providing an exemption from
4 emergency rule procedures, requiring the exercise of rule-making authority,
5 and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Health and Family Services (DHFS) administers the Badger Care health care program under which DHFS provides comprehensive health care coverage to eligible children and families (BadgerCare). Generally, a child or a family whose income does not exceed 185 percent of the federal poverty line and that does not have access to employer-subsidized health care coverage for which the employer subsidizes at least 80 percent of the cost is eligible for BadgerCare.

This bill prohibits a for-profit employer employing 10,000 or more full-time or part-time employees in this state (large employer) from reducing or eliminating the health care coverage provided to its employees if the large employer knows or should know that the reduction or elimination will or may result in enrollment of the child or the family of an employee in BadgerCare. The bill permits DHFS to impose on any large employer that reduces or eliminates the health care coverage provided to its employees in violation of the bill an assessment of not more than \$250,000 and requires DHFS to deposit any assessments collected under the bill in the Medical

BILL

Assistance trust fund. The bill requires DHFS, in determining whether an assessment is to be imposed and, if so, in fixing the amount of the assessment, to consider the gravity of the violation, ~~any good faith exercised by the large employer,~~ any previous violations committed by the large employer, the financial benefit to the large employer of committing or continuing the violation, and any other factors that are relevant to determining whether an assessment should be imposed and, if so, to fixing the amount of the assessment.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 25.77 (8) of the statutes is created to read:

2 25.77 (8) All moneys received under s. 49.667 (2) (f).

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5 employer, as defined in s. 49.667 (1) (c), states whether within the time period
6 specified in subd. 3. the large employer has reduced or eliminated the health care
7 coverage, as defined in s. 49.667 (1) (b), offered to that family member.

8 **SECTION 3.** 49.665 (4) (am) 3r. of the statutes is created to read:

9 49.665 (4) (am) 3r. Each parent of the child who is employed by a large
10 employer, as defined in s. 49.667 (1) (c), states whether within the time period
11 specified in subd. 3. the large employer has reduced or eliminated the health care
12 coverage, as defined in s. 49.667 (1) (b), offered to that parent.

13 **SECTION 4.** 49.667 of the statutes is created to read:

14 **49.667 Large employer health care assessment. (1) DEFINITIONS.** In this
15 section:

BILL

1 (a) “Employee” means any individual employed full time or part time in this
2 state by a large employer.

3 (b) “Health care coverage” means surgical, medical, hospital, major medical,
4 or other health care coverage offered by a large employer.

5 (c) “Large employer” means any person engaging in any activity, enterprise, or
6 business for profit that employs 10,000 or more employees in this state.

7 **(2) REDUCTION OR ELIMINATION OF HEALTH CARE COVERAGE PROHIBITED.** (a) Except
8 as provided in sub. (3), no large employer may reduce or eliminate the health care
9 coverage provided to its employees if the large employer knows or should know that
10 the reduction or elimination will or may result in enrollment of the child or the family
11 of an employee in the Badger Care health care program under s. 49.665.

12 (b) Any large employer that violates par. (a) or a rule promulgated by the
13 department under sub. (5) may be required to pay to the department an assessment
14 of not more than \$250,000. All violations arising out of the same incident or
15 occurrence shall be counted as a single violation.

16 (c) In determining whether an assessment is to be imposed and, if so, in fixing
17 the amount of the assessment, the department shall consider all of the following
18 factors:

19 1. The gravity of the violation, including the number of employees, children,
20 and other family members affected by the reduction or elimination of health care
21 coverage, the degree to which those employees, children, and other family members
22 are affected by that reduction or elimination, and the cost of increased enrollment
23 in the Badger Care health care program under s. 49.665 as a result of that reduction
24 or elimination.

BILL**SECTION 4**

2. Good faith exercised by the large employer. Indications of good faith include any past or ongoing efforts by the large employer to provide employer-subsidized health care coverage, as defined in s. 49.665 (1) (c), and other mitigating factors in favor of the large employer.

3. Any previous violations committed by the large employer.

4. The financial benefit to the large employer of committing or continuing the violation.

5. Any other factors that are relevant to determining whether an assessment should be imposed and, if so, to fixing the amount of the assessment.

(d) The department may directly impose an assessment provided for under par. (a). If the department determines that an assessment should be imposed for a violation, the department shall send a notice of assessment to the large employer. The notice shall specify the amount of the assessment imposed, the violation, and the statute or rule alleged to have been violated, and shall inform the large employer of the right to a hearing under par. (e).

(e) A large employer may contest an assessment imposed under par. (b) by sending, within 10 days after receipt of notice under par. (d), a written request for hearing under s. 227.44 to the division of hearings and appeals in the department of administration. The administrator of the division may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division shall be the final administrative decision. The division shall commence the hearing within 30 days after receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227. In any petition for judicial review of a decision by the division, the party, other

BILL

1 than the petitioner, who was in the proceeding before the division shall be the named
2 respondent.

3 (f) All assessments shall be paid to the department within 10 days after receipt
4 of notice of assessment or, if the assessment is contested under par. (e), within 10
5 days after receipt of the final decision after exhaustion of administrative review,
6 unless the final decision is appealed and the order is stayed by court order under s.
7 227.54. A large employer may not deduct any part of an assessment paid under this
8 subsection from the wages of an employee. The department shall deposit any
9 assessments received under this subsection in the Medical Assistance trust fund.

10 (g) The attorney general may bring an action in the name of the state to collect
11 any assessment imposed under this section if the assessment has not been paid
12 following the exhaustion of all administrative and judicial reviews. The only issue
13 to be contested in any such action shall be whether the assessment has been paid.

14 (3) EXCEPTIONS. A large employer is not liable under sub. (2) (b) for reducing
15 or eliminating an employee's health care coverage, if the department determines
16 that the reduction or elimination of health care coverage is the result of any of the
17 following:

18 (a) The sale of part or all of the large employer's business, if ~~the purchaser~~
19 ~~agrees in writing, as part of the purchase agreement, to continue providing health~~
20 ~~care coverage to all employees who received that coverage before the sale with no~~
21 ~~reduction in coverage and no break in coverage.~~ *is continued for* *or* *whether before or after the sale* ✓

22 (b) A natural or man-made disaster beyond the control of the large employer.

23 (4) RETALIATION PROHIBITED. (a) A large employer may not do any of the
24 following:

BILL**SECTION 4**

1 1. Discharge or otherwise retaliate or discriminate against any employee for
2 contacting, providing information to, or otherwise cooperating with the department
3 concerning an alleged violation of sub. (2) (a) or for participating, testifying, or
4 assisting in any proceeding under sub. (2) (b) to (g).

5 2. Discharge or otherwise retaliate or discriminate against any employee on
6 whose behalf another person contacted, provided information to, or otherwise
7 cooperated with the department concerning an alleged violation of sub. (2) (a) or on
8 whose behalf another person participated, testified, or assisted in any proceeding
9 under sub. (2) (b) to (g).

10 (b) Any employee who is discharged or otherwise retaliated or discriminated
11 against in violation of par. (a) 1. or 2. may file a complaint with the department of
12 workforce development under s. 106.54 (8).

13 (c) Any large employer that violates par. (a) 1. or 2. may be fined not more than
14 \$1,000 or imprisoned for not more than 6 months or both.

15 (5) RULES. The department of health and family services shall promulgate
16 rules to implement this section, including rules establishing criteria for determining
17 what constitutes a reduction or elimination of health care coverage and what
18 constitutes an incident or occurrence of health care coverage reduction or
19 elimination. The department of health and family services shall consult with the
20 department of commerce and the department of revenue in promulgating those
21 rules.

22 (6) ANNUAL REPORT. In January of each year, the department shall submit a
23 report to the governor and to the appropriate standing committees of the legislature
24 under s. 13.172 (3) on the department's activities during the previous year relating
25 to the implementation, enforcement, and administration of this section. The report

BILL

1 shall specify for the previous year the number of violations of sub. (2) (a) alleged to
2 have been committed and the disposition of those alleged violations, including for
3 each alleged violation whether an assessment was imposed and, if so, the amount of
4 the assessment.

5 **SECTION 5.** 106.54 (8) of the statutes is created to read:

6 106.54 (8) The division shall receive complaints of discharge, retaliation, or
7 discrimination under s. 49.667 (4) (b) and shall process those complaints in the same
8 manner that employment discrimination complaints are processed under s. 111.39.

9 **SECTION 6. Nonstatutory provisions.**

10 (1) LARGE EMPLOYER HEALTH CARE ASSESSMENT; RULES.

11 (a) The department of health and family services shall submit in proposed form
12 the rules required under section 46.667 (5) of the statutes, as created by this act, to
13 the legislative council staff under section 227.15 (1) of the statutes no later than the
14 first day of the 6th month beginning after the effective date of this paragraph.

15 (b) Using the procedure under section 227.24 of the statutes, the department
16 of health and family services may promulgate as emergency rules the rules required
17 under section 46.667 (5) of the statutes, as created by this act, for the period before
18 the effective date of the rules submitted under paragraph (a). Notwithstanding
19 section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this
20 paragraph remain in effect until the date on which the rules submitted under
21 paragraph (a) take effect. Notwithstanding section 227.24 (1) (a) and (3) of the
22 statutes, the department of health and family services is not required to provide
23 evidence that promulgating a rule under this paragraph as an emergency rule is
24 necessary for the preservation of public peace, health, safety, or welfare and is not

BILL**SECTION 6**

1 required to provide a finding of emergency for a rule promulgated under this
2 paragraph.

3 **SECTION 7. Initial applicability.**

4 (1) REDUCTION OR ELIMINATION OF HEALTH CARE COVERAGE. This act first applies
5 to a reduction or elimination of health care coverage that takes effect on the effective
6 date of this subsection.

7 (END)

Barman, Mike

From: Malaise, Gordon
Sent: Thursday, February 23, 2006 3:30 PM
To: Barman, Mike
Cc: Johnston, James
Subject: FW: Anti dumping bill



Mike;

DOA would like -4523 jacketed for both houses. -4523 can be jacketed for one house or the other now. I will have send a redraft through before the bill can be jacketed for the second house.

Gordon

From: Johnston, James - DOA [mailto:James.Johnston@Wisconsin.gov]
Sent: Thursday, February 23, 2006 3:25 PM
To: Malaise, Gordon
Cc: Moyer, Andrew NMN; Pink, Michelle C; Schmiedicke, David - DOA
Subject: FW: Anti dumping bill

Gordon,
Please have the bill jacketed for both houses.

Thanks,
Jim

From: Moyer, Andrew - Office of Governor Jim Doyle [mailto:Andrew.Moyer@gov.state.wi.us]
Sent: Thursday, February 23, 2006 2:50 PM
To: 'Johnston, James - DOA'
Subject: RE: Anti dumping bill

Can I get this jacketed for both the Senate and Assembly now. Thanks, I can pick them up if I need to.

Andrew Moyer
Legislative Liaison
Office of Governor Jim Doyle
W: (608) 266-3271, C: (608) 338-9887
andrew.moyer@gov.state.wi.us

From: Johnston, James - DOA [mailto:James.Johnston@Wisconsin.gov]
Sent: Thursday, February 23, 2006 2:09 PM
To: Moyer, Andrew NMN
Cc: Schmiedicke, David - DOA
Subject: Anti dumping bill

Andrew,
While the anti-dumping bill doesn't have a specific exception for financial hardship, it does have exceptions if the business is sold, or for natural or man made disasters. Further, the decision to impose the assessment (and the size of the assessment) can include: consideration of the gravity of the violation, the financial benefit

02/23/2006

to the employer from dropping health care coverage and any other factors that are relevant. The exact implementation of these policies will be amplified in rules.

Thus, it may be possible to consider an employer's desire to dump coverage in order to remain competitive and/or to respond to financial difficulties. Explicitly increasing the exceptions to include competitive/hardship rationales will decrease the likelihood that an employer would be found liable for dumping coverage.

The time needed for a possible rewrite will depend on how extensive the revisions are.

Jim